

Village of Irvington
Zoning Board of Appeals

Minutes of Meeting held January 18, 2000

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Tuesday, January 18, 2000, at the Isabel Benjamin Center.

The following members of the Board were present:

Louis C. Lustenberger, Esq., Chairman
Robert L. Bronnes
George Rowe, Jr., Esq.

Mr. Lustenberger acted as Chairman and Mr. Rowe as Secretary of the meeting.

AT&T

The principal matter on the agenda was an application by AT&T Wireless Services, Inc. (99-21) .

The matter had first been heard on December 14, 1999; and adjourned to the present hearing.

The applicant was represented by Neil J. Alexander of the firm of Cuddy and Fedder and Worby, LLP, White Plains, New York and by Christopher K. Klem, Radio Frequency Engineer.

At issue was AT&T's request for a use variance, to permit it to install a wireless telephone facility on the roof of Abbott House, 100 North Broadway, Irvington, New York.

The members of the Board had reviewed a letter from Arthur Jaffe, President of the Abbott School Teachers Association, urging that the application be denied, and stating that four Abbott House staff members had recently been diagnosed with cancer.

AT&T had submitted, in addition to previous submissions, a letter from the Cuddy firm dated January 10, 2000, to which was attached a calculation of emissions from the facilities, assuming all carriers' installations operating at full power, to which an adult on the roof of the School would be exposed, and a lease between AT&T and the school, redacted to exclude financial information.

Mr. Lustenberger, using the reports previously submitted by Omnipoint, February 18, 1997, Sprint, February 12, 1997, Nynex, September 24, 1998, Nextel, September 20, 1999, and AT&T, December 8, 1999, reviewed each, requesting clarification of certain information, and asking for explanations as to why the measurements of emissions varied from report to report.

Mr. Alexander pointed out that he had endeavored to explain the reasons for the discrepancies, but pointed out that, in last analysis, the maximum level of emission when all of the installations on the building are operating at full power is at ground level 4.03% of the maximum level of emissions permitted by the regulations of the FCC.

Ms. Ronnie Krauss, a neighbor, stated her opposition to the installation, arguing that safety considerations had yet to be resolved and that the Board should err on the side of safety where children are involved. She tabled an article from the Irvington Viewpoint, January 2000, written by her, "Are Our Children Guinea Pigs?", in opposition to the installation. She also submitted a letter from Dr. Allen Felix, a local physician, claiming that the installations represent a threat to the health of children at the school and in the neighborhood.

Mr. Lustenberger pointed out that municipal authorities, including this Board, have very limited authority to deny applications like the instant application. It can address only aesthetics, property values, and the need for the installation or additions to the installations. Here, he pointed out, the applicant has met the burden of showing need and there has been no evidence introduced that there are adverse aesthetic

effects or a diminution of property values. Mr. Klem, in particular, addressed the question of need, pointing out that there were gaps in the coverage in the Irvington area which could only be supplied by the new installation.

David Kaplan, a neighbor, addressed the Board, but his objections had more to do with the undesirability of Abbott House as a neighbor in general. P. Cerone, a neighbor, asked whether there were any assurances that the normal emissions of the antennae could be substantially increased without anyone knowing of such an increase. Mr. Klem pointed out that, good faith to one side, as a practical matter, that could not be done without disrupting AT&T's services as a whole and the services of other carriers as well.

Mr. Lustenberger reviewed at length the impact of the installation on the neighborhood, the need for the installation to provide safe and adequate service, the fact that the installation meets the FCC's radio frequency emission regulations, alone or in combination with those of the other carriers, and that no substantial evidence was submitted in opposition to the application. Following further discussion, the Board granted the application subject to the following conditions:

1. The variance shall last only until the expiration or termination of Applicant's lease with Abbott House, as renewed.
2. Applicant shall take such action as is necessary to make the Village of Irvington an additional, named insured on Applicant's insurance policy or policies for third-party liability coverage so as to give the Village the same such coverage as is presently enjoyed by Applicant against any such claims arising out of the installation at Abbott House.
3. The variance shall terminate with the termination of Abbott House's special permit.

Nextel

The Board voted to release the Nextel opinion.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.



George Rowe, Jr.